

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 1:14-27450

TIMOTHY W. CANADAY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiff filed a motion to substitute T.A. Bailey, as representative of the Estate of Timothy W. Canaday, as a party in this action for the deceased defendant, Timothy W. Canaday. In so doing and as contemplated by Federal Rule of Civil Procedure 25(a)(3), plaintiff filed a Notice of Hearing on that motion for July 25, 2017. By Memorandum Opinion and Order entered on June 29, 2017, the court granted the motion to substitute. Because the court was concerned that it had granted the motion to substitute prematurely, as a hearing appears to be contemplated by Rule 25(a)(3), the court scheduled a hearing on the motion to substitute for Tuesday, August 15, 2017, at 10:30 a.m., in Bluefield. By Order entered on August 4, 2017, that hearing was continued until further order of the court.

On August 3, 2017, the United States filed a Motion to Enter Agreed Order to Substitute Party. (ECF No. 77). According to that motion, the United States has given the notices required by Federal Rule of Civil Procedure 25; that T.A. Bailey is the

only nonparty entitled to service; that T.A. Bailey has waived service of the motion; and that T.A. Bailey has agreed to his substitution as a party herein, as the representative of the Estate of Timothy W. Canaday.

Based on the representations of the United States, the court declines to vacate its earlier order granting the motion to substitute. (ECF No. 75). Therefore, there is no reason to enter the Agreed Order to Substitute and the government's motion to that effect, ECF No. 77, is **DENIED** as moot. If it later comes to the court's attention that either a party or nonparty did not receive the notice required by Rule 25, the court will revisit its order of substitution. See F.D.I.C. v. Harger, 778 F. Supp.2d 1123, 1133-34 (D.N.M. 2011).

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record and unrepresented parties.

IT IS SO ORDERED this 18th day of September, 2017.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge